

# **FEDERAL** **JURISDICTION**

**SENTINELS AT JURISDICTIONAL DOORWAY**

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## ◆ **JURISDICTION DOORWAY CALISTHENICS**

### ○ **Test Jurisdiction First**

- ◆ Ruhrgas v. Marathon Oil (1999) 526 U.S. 574  
*(ordinarily subject matter jurisdiction first)*
- ◆ Dominguez-Cota v. Cooper Tire (5<sup>th</sup> Cir. 2005) 396 F.3d 1650  
*(subject matter jurisdiction before forum non conveniens)*

### ○ **No Hypothetical Jurisdiction**

- ◆ Steel Co. v. Citizens for a Better Environment (1998) 523 U.S. 83  
*(if no jurisdiction, court not to reach the merits)*

### ○ **The Sua Sponte Snapshot**

- ◆ Grupo Dataflux v. Atlas (2004) 541 U.S. 567  
*(later dismissal of nondiverse party does not cure lack of jurisdiction at commencement)*
- ◆ Hospitality House v. Gilbert (5<sup>th</sup> Cir. 2002) 298 F.3d 424  
*(No continuing jurisdiction to enforce a settlement unless court expressly retains it in dismissal order)*

# **SENTINEL AT THE FRONT DOOR**

## **◆ ARISING UNDER – WHERE’S WALDO?**

### **○ Federal Defenses Don’t Count**

- ◆ Louisville & Nashville R.R. v. Mottley (1908) 211 U.S. 149 (anticipated federal defense insufficient)

### **○ Well-Pleaded Complaint – Not Counterclaim**

- ◆ Holmes Group v. Vornado Air Circulation Sys. (2002) 535 U.S. 836 (presence of federal counterclaim does not create federal jurisdiction)

### **○ Federal Law Creates Right to Sue??**

- ◆ Grable & Sons v. Darue Engineering (2005) 125 S.Ct. 2363 (state quiet title action involving federal tax lien notice issue arises under federal law); see also Broder v. Cablevision Systems Corp. (2<sup>nd</sup> Cir. 2005) 418 F.3d 187
- ◆ Merrell Dow Pharm. v. Thompson (1986) 478 U.S. 804 (state drug misbranding claims involving federal standard of care does not arise under federal law)

## ♦ **Federal Ingredient in State Soup?**

### ○ **Federal Interest Limited**

- ♦ Opera Plaza v. Hoang (9<sup>th</sup> Cir. 2004) 376 F.3d 831 (no jurisdiction over homeowners' association's suit as to placement of satellite dish despite federal preemption)
- ♦ City of Rome v. Verizon (2<sup>nd</sup> Cir. 2004) 362 F.3d 168 (no federal jurisdiction over suit to compel television producer to negotiate franchise agreement with city)

### ○ **Federal Interest Substantial**

- ♦ Verizon v. Public Service Comm'n (2002) 122 S.Ct. 1753 (federal jurisdiction under 1996 Federal Telecommunications Act)
- ♦ Sam L. Majors v. ABX (5<sup>th</sup> Cir. 1997) (common carriers)
- ♦ Other Federal Common Law: (e.g., relations with foreign nations, Indian gaming, federal currency, enforcement of federal tariffs, government procurement contracts); see Aroostook Band of Micmacs v. Ryan (1<sup>st</sup> Cir. 2005) 404 F.3d 48

## ◆ **OTHER FRONT DOOR CLOSERS**

### ○ **Non-Federalized Arbitration**

- ◆ Carter v. Health Net (9<sup>th</sup> Cir. 2004) 374 F.3d 830 (presence of federal question in arbitration does not provide jurisdiction for review of award)
- ◆ Prudential Bache v. Fitch (5<sup>th</sup> Cir. 1992) 966 F.2d 981 (no arising under federal jurisdiction over petition to compel arbitration of federal claim); *contra* Discover Bank v. Vaden (4<sup>th</sup> Cir. 2005) 396 F.3d 366

### ○ **No State Appeals to Federal Court**

- ◆ Federacion de Maestros v. Junta de Delaciones (1<sup>st</sup> Cir. 2004) (*Rooker-Feldman* doctrine barred federal court review of final state court judgment)
- ◆ Exxon Corp. v. Saudi Basic Industries Corp. (2005) 125 S.Ct. 1517 (*Rooker-Feldman* does not bar parallel state court lawsuit simply because judgment entered while federal suit is pending)
- ◆ Mothershed v. Justice of Super. Court (9<sup>th</sup> Cir. 2005) 410 F.3d 602 (*Rooker-Feldman* bars federal jurisdiction over state bar proceeding)

# **SENTINEL AT THE VISITOR'S DOOR**

## **♦ Kindergarten Cop – Complete Diversity**

### **○ Test Domicile Factually**

- ♦ Sunseri v. Macro Cellular Partners (11<sup>th</sup> Cir. 2005) 412 F.3d 1247 (domicile proved by mortgage document listing home as primary residence); see also Altimore v. Mt. Mercy College (8<sup>th</sup> Cir. 2005) 420 F.3d 763
- ♦ Tosco v. Comm. For Better Environment (9<sup>th</sup> Cir. 2001) 236 F.3d 495 (large corporation's principal place of business found where highest percentage of business); MacGinnitic v. Hobs Group (11<sup>th</sup> Cir. 2005) 420 F.3d 1234
- ♦ Diaz-Rodriguez v. Pep Boys Corp. (1<sup>st</sup> Cir. 2005) 410 F.3d 56 (nerve center test used for farflung corporations)

### **○ Take Head Count of All Partners**

- ♦ Magnolia Mgt. Corp. v. Quest Rescue Partners (S.D. Miss. 1992) 792 F.Supp.2d 45 (in multi-tiered partnerships, examine citizenship of all partners)

### **○ Is it a Corporation?**

- ♦ General Technology v. Exro LTDA (4<sup>th</sup> Cir. 2004) 388 F.3d 114 (LLC is not a corporation)
- ♦ Hoagland v. Sandberg (7<sup>th</sup> Cir. 2004) 385 F.3d 737 (professional corporation is a corporation)

## ◆ **WIDENING THE CLASS ACTION DOORWAY**

### ○ **Class Action Fairness Act - Minimal Diversity**

- ◆ Any plaintiff class member is of different state than any defendant (28 U.S.C. sec. 1332(d)(2)(A)), or
- ◆ Any plaintiff class member is subject of foreign state and any defendant is citizen of state (or the reverse) (28 U.S.C. sec. 1332(d)(2)(B)(C)); and
- ◆ Aggregate amount in controversy exceeds \$5,000,000 (28 U.S.C. sec. 1332(d)(2); Berry v. American Express Pub. (C.D. Cal. 2005) 2005 WL 1941151 – “either viewpoint” approach followed); and
- ◆ Must be 100 or more members of proposed plaintiff class and primary defendants are not states or state officials (28 U.S.C. sec. 1332(d)(5)); and
- ◆ Includes “mass actions” – non-class actions that involve 100+ persons whose claims (in excess of \$75,000) are joined together and involve common questions of law or fact

### ○ **Broad New Removal of CAFA Actions**

- ◆ State court class actions meeting the CAFA requirements (including “mass actions”) may be removed to federal court (28 U.S.C. sec. 1453)
- ◆ Removal rules relaxed: no local defendant removal bar; no consent of co-defendants required; no one-year outside limit for removals; and remand ruling appealable (28 U.S.C. sec. 1453(b))

- Abstaining from CAFA Jurisdiction

- ◆ **Mandatory Abstention:** A court shall decline to exercise jurisdiction over a CAFA action if:

- More than two-thirds of the members of proposed class are citizens of forum state and at least one defendant from who significant relief is sought, and whose alleged conduct forms a significant basis for the claims asserted is a citizen of the forum state, and the principal injuries resulting from the alleged conduct were incurred in the forum state; or
- Two-thirds or more of the members of the proposed class and the primary defendants are citizens of the forum state.

- ◆ **Discretionary Abstention:** A court may decline to exercise jurisdiction over CAFA action if:

- Greater than one-third but less than two-thirds of the members of the proposed class and the primary defendants are citizens of the forum state; and
- After consideration of various factors including whether the claims involve matters of national or interstate interest, the forum state's law will be applied, the class action is pleaded in a manner to avoid federal jurisdiction, the forum has a distinct nexus with the class, the number of class members from the forum state is substantially larger than from other states.



## **. Procedures & Protections Under CAFA**

### **Notice to State and Federal Officials**

Within 10 days after a proposed class action settlement is filed in court, each settling defendant must serve the U.S. Attorney General and the State officer with primary regulatory responsibility over defendant's business (or if none the State Attorney General), and the settlement may not be approved sooner than 90 days after such notice. (28 U.S.C. sec. 1715(b))

The notice of the proposed settlement must be accompanied by a copy of the complaint, notice of the judicial hearing, the proposed or final notification to class members, the proposed or final class settlement (including any agreement between class counsel and defendant), any proposed final judgment, any written judicial opinion relating to the settlement, and, if feasible, the names of class members who reside in each State and their estimated proportionate share of the entire settlement. (28 U.S.C. sec. 1715(b))

### **Geographic Discrimination Barred**

Court may not approve proposed settlements that provide greater payments to some class members than others based solely on their geographical proximity to the court (e.g. Virginia district court may not approve higher payouts to class members who reside in Virginia than to those who reside elsewhere solely because of their Virginia residence). (28 U.S.C. sec. 1714)

### **Restrictions on Class Payment of Fees in Nonmonetary Settlements**

A court may not approve a proposed settlement obligating any class member to make payments to class counsel "resulting in a net loss to the class member," without written findings that the nonmonetary benefits to the class members "substantially outweigh" the monetary loss. (28 U.S.C. sec. 1713)

## **Restrictions on Coupon Settlements**

A class settlement that calls for class members to receive coupons from the defendant (redeemable for goods or services) may be approved only after a hearing in which the court determines that the settlement is fair, reasonable and adequate for class members, and makes written findings to that effect. (28 U.S.C. sec. 1712(e))

The court may, upon motion of a party, receive expert testimony from a qualified expert to determine the "actual value" to the class members of the coupons that are redeemed. (28 U.S.C. sec. 1712(d)) And the court may also require that the proposed settlement provide that a portion of the value of the unclaimed coupons be distributed to one or more charitable organizations designated by the parties. (28 U.S.C. sec. 1712(e))

## **Restrictions on Fee Awards in Coupon Settlements**

Where a class counsel's fee is determined by a percentage of the recovery, the fee award to class counsel attributable to a coupon settlement must be based on the value to the class members of the coupons that are redeemed. (28 U.S.C. sec. 1712(a)) Where the attorney's fee is not determined by a percentage of coupons, the court shall determine the fee based on time reasonably expended working on the action. (28 U.S.C. sec. 1712(b))

# **SENTINEL AT THE BACK DOOR**

## **◆ NO REMOVAL JURISDICTION TICKET**

### **○ Distrust Sham Joinder Assertions**

- Gray v. Beverly Enterprises (5<sup>th</sup> Cir. 2004) 390 F.3d 400 (claims by nursing home residents against nondiverse home managers not sham)
- Melder v. Allstate (5<sup>th</sup> Cir. 2005) (defendant fraudulently joined if claim barred for failure to exhaust administrative remedies)
- Smallwood v. Illinois Central R.R. (5<sup>th</sup> Cir. 2004) 385 F.3d 568 (sham joinder rule does not apply if asserted defense applied to all defendants)
- Boone v. Citigroup (5<sup>th</sup> Cir. 2005) 416 F.3d 382 (*Smallwood* not implicated if defense does not apply equally to all defendants)

○ **Avoid Preemption Fever**

- Cramer v. Consolidated Freightways (9<sup>th</sup> Cir. 2001) 255 F.3d 683 (state law claims by union employees are not completely preempted if they involve non-negotiable rights)
- Arana v. Ochsner Health Plan (5<sup>th</sup> Cir. 2002) 313 F.3d 330 (no ERISA preemption as to insurer's subrogation claim)

○ **Show Me All the States of Citizenship**

- Rolling Green v. Comcast (11<sup>th</sup> Cir. 2004) 374 F.3d 1020 (citizenship of each member of LLC must be alleged in notice of removal in diversity case)
- Roche v. Lincoln Properties (4<sup>th</sup> Cir. 2004) 373 F.3d 610 (citizenship of each partner must be alleged in notice of removal in diversity case)

○ **Show Me the Amount in Controversy**

- Gaus v. Miles (9<sup>th</sup> Cir. 1992) 980 F.2d 564 (notice of removal must provide facts –not boilerplate – supporting amount in controversy)
- Valdez v. Allstate (9<sup>th</sup> Cir. 2004) 372 F.3d 1115 (notice of removal must allege amount in controversy)
- Munro v. Golden Rule Ins. Co. (9<sup>th</sup> Cir. 2004) 393 F.3d 720 (liability of \$3,300 plus punitive damages could not exceed \$75,000)

## ◆ **THE REVOLVING DOOR - REMAND**

### ○ **Sleeping Through the Removal Time Clock**

- Brown v. Demco (5<sup>th</sup> Cir. 1986) 792 F.2d 4778  
(removal must take place within 30 days of service on first defendant); *contra* Marano Enterprises v. Z-Teca Restaurants (8<sup>th</sup> Cir. 2001) 254 F.3d 753
- Davis v. Merck & Co. (E.D. Tex. 2005) 357 F.Supp. 2d 974 (case that becomes removable on diversity grounds no later than one year after commencement, unless bad faith of plaintiff to circumvent removal)

### ○ **The Changing Line-Up Card**

- Stevens v. Brink's (9<sup>th</sup> Cir. 2004) 2004 WL 1737647  
(remand if nondiverse party added post-removal)
- Harless v. CSX Hotels (4<sup>th</sup> Cir. 2004) 2004 WL 259149 (remand if federal claim dismissed)

### ○ **The Squeaky Back Door**

- Local Union v. P.J. Dick (S.D. Ohio 2003) 253 F.Supp.2d 1022 (remand for co-defendant's failure to join in removal; averment of joinder insufficient)
- Uppal v. Electronic Data Systems (E.D. Mich. 2004) 316 F.Supp.2d 531 (remand if removal sought on wrong ground, even if other grounds existed)
- Kisor v. Collins (N.D. Ala. 2005) 338 F.Supp.2d 1279 (remand for failure to attach state court summons)

# **SENTINEL AT THE SIDE DOOR**

## **♦ Widening Side Door – Supplemental Jurisdiction?**

- Exxon Mobil Corp. v. Allapattah (2005) 125 S.Ct. 2611  
(nondiverse co-plaintiff need not satisfy amount in controversy)
- State National Ins. Co. v. Yates (5<sup>th</sup> Cir. 2004) 391 F.3d 577  
(nondiverse party joined by defendant comes within supplemental jurisdiction)

## **♦ Just Say No to Supplemental Jurisdiction**

- Weinrich v. Levi Strauss (S.D. Miss. 2005) 366 F.Supp.2d 439  
(removal of parallel state court case not allowed on grounds of supplemental jurisdiction)
- ♦ 28 U.S.C. Section 1367(c): Dismissal of supplemental state law claims if:
  - ♦ Claim raises novel or complex issue of state law;
  - ♦ Claim substantially predominates over claims over which court has original jurisdiction;
  - Court has dismissed all claims over which is has original jurisdiction; or
  - In exceptional circumstances there are other compelling reasons to decline jurisdiction.